IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2217 of 2007
With
SPECIAL CIVIL APPLICATION No. 2236 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANABHAI POLABHAI SATIYA - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 2 - Respondent(s)

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Appearance :
MR AR SHAIKH for Petitioner(s) : 1,
MR.DIPEN DESAI AGP IN S.C.A.NO.2217 for Respondent(s) : 1,
MS.MD MEHTA AGP IN S.C.A.NO.2236 for Respondent(s) : 1
RULE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/08/2007

ORAL JUDGMENT

1. The petitioners have invoked Article 226 of the Constitution to challenge identical orders dated 11.01.2007 of District Magistrate, Bhavnagar, issued in exercise of the powers

conferred by Sub-Section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short “P.A.S.A.”). Since facts of both the cases and documents and grounds of detention are stated to be identical, both the petitions are heard together and disposed by this common judgment.

2. According to the grounds of detention supplied to the petitioners under the provisions of Section 9 of P.A.S.A., the petitioners are bootleggers and reported to have been involved in offences under the Prohibition Act which are registered in Palitana Town Police Station as C.R.No.193 of 2006 on 17.12.2006 and they are stated to have been arrested on the same day and released on bail on 20.12.2006, pending investigation by the police. The muddamal recovered in the said offences is stated to be 148 bottles of liquor valued at Rs.59,200/-. It is, on that basis, stated in the grounds that the petitioners were bootleggers and causing danger to public health whereby public order was likely to be adversely affected. It is stated *inter alia* in the affidavit-in-reply of the Detaining Authority as under:-

> “.....I have carefully examined the documents relating to the one case registered against the detenu and from those materials, it is clear that the

detenu falls within the definition of 'bootlegger' as defined under Section 2(b) of P.A.S.A. Act. Therefore, on carefully scrutinising, examining and considering the materials placed before me including the papers pertaining to the above cases and after applying my mind to the facts of the case, I came to the conclusion that the detenue is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of his antisocial and bootlegging activities may cause grave or widespread danger to life, property and public health. Therefore, after subjectively satisfying that the antisocial and bootlegging activities of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu under the P.A.S.A. Act with a view to immediately prevent him from continuing such illegal, antisocial and bootlegging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in

compliance and in consonance with the provisions of the P.A.S.A. Act as well as the Constitution of India and the said order is legal, valid and proper.....”

3. In the above facts, it was sought to be argued on behalf of the respondents that danger to public health caused by the activities of bootlegging by the petitioners substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioners from acting in any manner prejudicial to the maintenance of public order and the impugned order directing his detention were legal and justified.

4. However, as held by this Court in **Amarbhai Kanjibhai Nayak V/s. Commissioner of Police Ahmedabad City & Ors. [1999(3)G.L.R.2703]** and in **Sohanlal Surajaram Visnoi V/s. State of Gujarat and others [2004(2)G.L.R. 1051]**, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of Sub-Section (4) of Section 3 and the Explanation appended thereto that the presumption of likelihood of public

order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction.

5. Therefore, in the facts and circumstances, impugned orders dated 11.01.2007 of preventive detention are found and held to be unsustainable in law and hence set aside with the direction that the petitioners shall be set at liberty forthwith unless required in connection with any other case to be detained in custody. Rule is made absolute in each of the petitions with no order as to costs. Direct service is permitted.

(D.H.WAGHELA, J.)

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